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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

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SEIRUS INNOVATIVE ACCESSORIES, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Case No. 09 CV 2 27 4 JAH

WMC

SEIRUS INNOVATIVE ACCESSORIES,
INC., a Utah corporation,
Plaintiff,

v.

BALBOA MANUFACTURING
COMPANY, LLC, a California Limited
Liability Company,

Defendant.

COMPLAINT FOR:

1. PATENT INFRINGEMENT
2. INDUCING PATENT INFRINGEMENT
3. FEDERAL TRADE DRESS INFRINGEMENT [15 U.S.C. § 1125(a)]
4. FALSE DESIGNATION OF ORIGIN [15 U.S.C. § 1125(a)]
5. FEDERAL UNFAIR COMPETITION [15 U.S.C. § 1125(a)]
6. STATE UNFAIR COMPETITION [Cal. Bus. & Prof. Code § 17200 *et seq.*]
7. DECLARATORY RELIEF FOR PATENT INVALIDITY

DEMAND FOR JURY TRIAL

1 For its claims against defendant BALBOA MANUFACTURING COMPANY LLC
2 ("DEFENDANT"), plaintiff SEIRUS INNOVATIVE ACCESSORIES, INC. ("SEIRUS"),
3 hereby alleges as follows:

4 **PARTIES**

5 1. SEIRUS is a Utah corporation with its principal place of business at 13975
6 Danielson Street, Poway, California 92064. SEIRUS is engaged in the business of selling men's,
7 women's, and children's action and outdoor apparel and accessories, including face masks.

8 2. Upon information and belief, BALBOA MANUFACTURING COMPANY, LLC
9 ("DEFENDANT") is a California Limited Liability Company with a principal place of business
10 at 12220 Pkwy Center Drive, Suite B, Poway, California, 92064. Upon information and belief,
11 DEFENDANT is the owner and operator of the brand name ZANheadgear, and is engaged in the
12 business of selling men's, women's, and children's action and outdoor apparel and accessories,
13 including cold weather head gear and face masks.

14 **JURISDICTION AND VENUE**

15 3. This civil action for infringement, unfair competition, and declaratory relief arises
16 under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, under the Lanham Act, 15
17 U.S.C. § 1051 *et seq.*, under 28 U.S.C. §§ 2201-2202, and under California state law governing
18 unfair competition, specifically California Business and Professions Code § 17200 *et seq.*

19 4. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C.
20 § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a) and (b), and supplemental jurisdiction pursuant to
21 28 U.S.C. § 1367.

22 5. Upon information and belief, DEFENDANT has either directly or through its
23 agents transacted business in the State of California and within this judicial district, and expected
24 or reasonably should have expected its acts to have consequence in the State of California and
25 within this judicial district, thus subjecting DEFENDANT to the personal jurisdiction of this
26 Court.

27 6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b) as
28 DEFENDANT is doing business in this judicial district and therefore may be found in this

1 district, and/or a substantial part of the events giving rise to the claims alleged herein occurred
2 within this district.

3 **FACTS COMMON TO ALL CLAIMS**

4 **(A) DEFENDANT'S INFRINGEMENT OF SEIRUS' PATENTS**

5 7. SEIRUS is the owner of United States Letters Patent No. 5,214,804 (the "'804
6 PATENT") which issued on June 1, 1993 and is titled "PROTECTIVE MASK WITH SCARF,"
7 and United States Letters Patent No. 6,272,690 (the "'690 PATENT") which issued on August
8 14, 2001 and is titled "HEAD COVERING."

9 8. DEFENDANT is offering for sale and, upon information and belief, has sold in
10 this judicial district and elsewhere throughout the United States, the following products or lines
11 of products, that fall within the scope of at least one claim of the '804 PATENT:

12 ZANHEADGEAR NEODANNA, ZANHEADGEAR COOLMAX BALACLAVA,
13 ZANHEADGEAR FLEECE BALACLAVA WITH DICKIE, ZANHEADGEAR FLEECE
14 FACE MASK WITH MESH MOUTH ("'804 PATENT ACCUSED PRODUCTS").

15 9. DEFENDANT is also offering for sale and, upon information belief, has sold in
16 this judicial district and elsewhere throughout the United States, the following products or lines
17 of products, that fall within the scope of at least one claim of the '690 PATENT:

18 ZANHEADGEAR COOLMAX BALACLAVA, ZANHEADGEAR FLEECE BALACLAVA
19 WITH DICKIE. ("'690 PATENT ACCUSED PRODUCTS").

20 **(B) DEFENDANT'S INFRINGEMENT OF SEIRUS' TRADE DRESS IN PRODUCTS**
21 **AND PACKAGING**

22 **(i) SEIRUS' PRODUCT TRADE DRESS**

23 10. By virtue of the extensive use, sale and advertising by SEIRUS and others on
24 behalf of SEIRUS, the shape, form and appearance of SEIRUS products (hereinafter the
25 "SEIRUS PRODUCT TRADE DRESS"), are inherently distinctive and have acquired
26 distinctiveness and secondary meaning to signify SEIRUS as the manufacturer and the source of
27 these goods.

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1 (ii) **SEIRUS' PACKAGING TRADE DRESS**

2 11. By virtue of the extensive use, sale and advertising by SEIRUS and others on
3 behalf of SEIRUS, the shape, form and appearance in use of the packaging of SEIRUS products
4 (hereinafter the "SEIRUS PACKAGING TRADE DRESS"), has acquired secondary meaning in
5 the market for cold-weather headgear.

6 12. DEFENDANT is offering for sale and, upon information and belief, has sold in
7 this judicial district and elsewhere throughout the United States, the following products, that
8 copy, imitate, palm off as, and pass off their products as members of the family of products that
9 contain the SEIRUS PRODUCT TRADE DRESS and SEIRUS PACKAGING TRADE DRESS:
10 ZANHEADGEAR NEODANNA, ZANHEADGEAR COOLMAX BALACLAVA,
11 ZANHEADGEAR FLEECE BALACLAVA WITH DICKIE, ZANHEADGEAR FLEECE
12 FACE MASK WITH MESH MOUTH (the "ACCUSED TRADE DRESS PRODUCTS").

13 (C) **THE INVALIDITY OF DEFENDANT'S PATENT NO. D566,339**

14 13. Upon information and belief, DEFENDANT is the assignee and owner of United
15 States Design Patent No. D566,339, entitled "Combined Nose and Mouth Guard" (the "'339
16 PATENT"). The application (No. 29/278,839) for the '339 PATENT was filed on or about April
17 11, 2007, and the patent issued on or about April 8, 2008. However, the invention in the '339
18 PATENT was known or used by others prior to the invention thereof by the applicant for the
19 '339 PATENT. The Claim of the '339 PATENT is invalid for failure to satisfy the statutory
20 criteria for patentability under the patent laws of the United States, including without limitation
21 35 U.S.C. §§ 101, 102, 103, and 171.

22 **CLAIMS FOR RELIEF**

23 **FIRST CLAIM FOR RELIEF**
24 **(Patent Infringement)**

25 14. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and
26 every allegation in the foregoing paragraphs, as though fully set forth herein.

27 15. As alleged herein, DEFENDANT is infringing at least one claim of the '804
28 and/or '690 PATENTS literally and/or under the doctrine of equivalents.

1 16. As a direct and proximate result of DEFENDANT'S infringement of the '804
2 and/or '690 PATENTS, SEIRUS has been damaged in an amount to be proved at trial, but in an
3 amount not less than a reasonable royalty, and includes lost sales, and/or lost profits.

4 17. Based upon its prior knowledge of SEIRUS' patent rights, and other facts to be
5 proved at trial, DEFENDANT knows and has known of its infringement of the '804 and/or '690
6 PATENTS. Based on these facts and those to be proved at trial, DEFENDANT'S infringement
7 is willful and done with intentional disregard of SEIRUS' rights in the '804 and/or '690
8 PATENTS, so as to render this case exceptional within the purview of 35 U.S.C. §§ 284, and
9 285, such that SEIRUS is entitled to enhanced damages, costs, and an award of attorneys' fees.

10 18. SEIRUS has been and continues to be damaged by the unlawful infringing
11 activities of DEFENDANT and will be irreparably harmed unless the unlawful infringing
12 activities are preliminarily and permanently enjoined by this Court as provided by 35 U.S.C. §
13 283.

14 **SECOND CLAIM FOR RELIEF**
 (Inducing Patent Infringement)

15 19. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and
16 every allegation in the foregoing paragraphs, as though fully set forth herein.

17 20. Upon information and belief, DEFENDANT has been and is now unlawfully
18 inducing others to infringe and/or contributorily infringe, literally or under the doctrine of
19 equivalents, the claim of the '804 and/or '690 PATENTS by using, offering to sell, advertising
20 for sale and selling DEFENDANT'S products in this judicial district and throughout the United
21 States as follows: ZANHEADGEAR NEODANNA, ZANHEADGEAR COOLMAX
22 BALACLAVA, ZANHEADGEAR FLEECE BALACLAVA WITH DICKIE,
23 ZANHEADGEAR FLEECE FACE MASK WITH MESH MOUTH.

24 21. SEIRUS is marking its products that fall within the scope of the '804 and '690
25 PATENTS as required by 35 U.S.C. § 287; DEFENDANT has otherwise had knowledge and
26 notice of the '804 and/or '690 PATENTS and its activities constitute knowing and willful patent
27 infringement. SEIRUS has been and continues to be damaged by the unlawful infringing
28 activities of DEFENDANT and will be irreparably harmed unless the unlawful infringing

1 activities are preliminarily and permanently enjoined by this Court as provided by 35 U.S.C. §
2 271(b).

3 22. Upon information and belief, SEIRUS has suffered and continues to suffer lost
4 sales and in turn damages as a direct result of the unlawful infringement of the '804 and/or '690
5 PATENTS by DEFENDANT. Under 35 U.S.C. § 284, SEIRUS is entitled to damages to be
6 established at trial or upon an accounting adequate to compensate for the infringement, including
7 lost profits, but not less than a reasonable royalty.

8 23. Upon information and belief, DEFENDANT'S infringement of the '804 and '690
9 PATENTS is willful and done with an intent to harm SEIRUS or in reckless disregard for the
10 rights of SEIRUS. Therefore, this is an exceptional case and SEIRUS is entitled to enhanced
11 damages under 35 U.S.C. § 284.

12 24. This is an exceptional case under 35 U.S.C. § 285 entitling SEIRUS to its
13 reasonable attorneys' fees.

14 25. SEIRUS has been and continues to be damaged by the unlawful infringing
15 activities of the DEFENDANT and will be irreparably harmed unless the unlawful infringing
16 activities are preliminarily and permanently enjoined by this Court as provided by 35 U.S.C. §
17 283.

18 **THIRD CLAIM FOR RELIEF**
19 **(Federal Trade Dress Infringement)**
20 **[15 U.S.C. § 1125(a)]**

21 26. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and
22 every allegation in the foregoing paragraphs, as though fully set forth herein.

23 27. DEFENDANT'S actions in connection with the sale, offering for sale, distribution
24 or advertising of the ACCUSED TRADE DRESS PRODUCTS in interstate commerce, without
25 the consent of SEIRUS, constitute willful, deliberate and intentional infringement of the SEIRUS
26 PACKAGING TRADE DRESS and SEIRUS PRODUCT TRADE DRESS, and have caused and
continue to cause a likelihood of confusion, in violation of 15 U.S.C. § 1125.

27 28. By reason of the foregoing, SEIRUS has been injured in an amount to be proven.
28 In addition, as a result of DEFENDANT'S unlawful acts, SEIRUS has suffered and will continue

1 to suffer irreparable harm, and SEIRUS has no adequate remedy at law with respect to this
2 injury. Unless the acts of trademark infringement are enjoined by this Court, SEIRUS will
3 continue to suffer a risk of irreparable harm. DEFENDANT'S actions have been knowing,
4 intentional, wanton, and willful, entitling SEIRUS to damages, treble damages, profits,
5 attorneys' fees, statutory damages, and the costs of this action.

6 **FOURTH CLAIM FOR RELIEF**
7 **False Designation of Origin**
8 **[15 U.S.C. § 1125(a)]**

9 29. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and
10 every allegation in the foregoing paragraphs, as though fully set forth herein.

11 30. DEFENDANT'S actions in connection with the sale, offering for sale, distribution
12 or advertising of the ACCUSED TRADE DRESS PRODUCTS in interstate commerce, without
13 SEIRUS' consent, is a false designation of origin, and have caused and continue to cause a
14 likelihood of confusion, mistake, and deception as to source, sponsorship, affiliation, and/or
15 connection in the minds of the public.

16 31. DEFENDANT'S false designation of origin is in violation of §43(a) of the
17 Lanham Act, 15 U.S.C. §1125(a)(1).

18 32. By reason of the foregoing, SEIRUS has been injured in an amount not yet fully
19 determined, but believed to be in excess of \$75,000. In addition, as a result of DEFENDANT'S
20 acts of infringement, SEIRUS has suffered and will continue to suffer irreparable harm, and
21 SEIRUS has no adequate remedy at law with respect to this injury. Unless DEFENDANT'S acts
22 of infringement are further enjoined by this Court, SEIRUS will continue to suffer a risk of
23 irreparable harm.

24 33. DEFENDANT'S actions have been knowing, intentional, wanton, and willful,
25 entitling SEIRUS to damages, treble damages, profits, attorney's fees, and the costs of this action
26 pursuant to 15 U.S.C. § 1117 in this Court's discretion.

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FIFTH CLAIM FOR RELIEF
(Unfair Competition)
[15 U.S.C. § 1125(a)(1)]

34. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and every allegation in the foregoing paragraphs, as though fully set forth herein.

35. SEIRUS manufactures and sells products and lines of products, and by virtue of the extensive, use, sale and advertising by SEIRUS, the associated SEIRUS PRODUCT TRADE DRESS and SEIRUS PACKAGING TRADE DRESS have become inherently distinctive and have acquired distinctiveness, secondary meaning, and sufficient fame to signify SEIRUS as the manufacturer and source of said products and lines of products.

36. Upon information and belief, DEFENDANT has unlawfully and without license or right, copied, imitated, and otherwise created a collection of products and lines of products including the ACCUSED TRADE DRESS PRODUCTS, all of which emulate, imitate, palm off as, pass off as and copy the SEIRUS PRODUCT TRADE DRESS and SEIRUS PACKAGING TRADE DRESS to thereby emulate, imitate, palm off as, and pass off its products as SEIRUS products.

37. The activities of DEFENDANT in advertising, selling and offering to sell each of the ACCUSED TRADE DRESS PRODUCTS, separately and together, is likely to cause confusion, mistake, and deception as to the source and origin thereof so that purchasers thereof and others will likely be confused and believe the ACCUSED TRADE DRESS PRODUCTS emanate from SEIRUS. In turn, DEFENDANT is unfairly competing and misrepresenting their products to be those of SEIRUS in violation of 15 U.S.C. § 1125(a).

38. The activities of DEFENDANT in advertising for sale, offering for sale, and selling the ACCUSED TRADE DRESS PRODUCTS constitute unlawful and tortious unfair competition, palming off and passing off, and misrepresentation as to the source of goods in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

39. SEIRUS believes it has suffered and continues to suffer lost sales and, in turn, damages as a direct result of the unlawful and unfair competition of DEFENDANT. Under 15 U.S.C. § 1117, SEIRUS is entitled to damages, including lost profits and the costs of this action,

1 to be shown at trial or upon an accounting.

2 40. On information and belief, DEFENDANT'S unfair competition in violation of 15
3 U.S.C. § 1125(a)(1) is willful and done with an intent to harm SEIRUS or in reckless disregard
4 for the rights of SEIRUS such that SEIRUS is entitled to triple damages under 15 U.S.C. §
5 1117(b).

6 41. Under 15 U.S.C. § 1117(b), this is an exceptional case and SEIRUS is entitled to
7 recover its attorneys' fees.

8 42. SEIRUS has been and continues to be damaged by the unlawful unfair
9 competition of DEFENDANT and will be irreparably harmed unless the unlawful infringing
10 activities are permanently enjoined by this Court under the provisions of 15 U.S.C. § 1116.
11 SEIRUS is entitled to an injunction enjoining and restraining DEFENDANT from further acts of
12 unfair competition.

13 **SIXTH CLAIM FOR RELIEF**

14 **Unfair Competition**

15 **[Cal. Bus. & Prof. Code § 17200 *et seq.*]**

16 43. SEIRUS refers to, re-alleges, and incorporates herein by this reference, each and
17 every allegation in the foregoing paragraphs, as though fully set forth herein.

18 44. California Business & Professions Code § 17200 *et seq.* provides that unfair
19 competition means and includes "any unlawful, unfair or fraudulent business act or practice and
20 unfair, deceptive, untrue or misleading advertising."

21 45. By and through DEFENDANT'S conduct, including the conduct detailed above,
22 DEFENDANT has engaged in activities that constitute unlawful, unfair, and fraudulent business
23 practices prohibited by Business & Professions Code § 17200 *et seq.*

24 46. DEFENDANT'S acts of intentional and willful trade dress infringement as
25 alleged above constitute unfair competition actionable under the laws of the State of California
26 as unlawful business acts or practices in that, *inter alia*, said acts violate the federal Lanham Act.
27 Specifically, and without limitation, DEFENDANT'S actions of designing, manufacturing,
28 packaging, selling, distributing, and/or offering for sale in interstate commerce products bearing
the SEIRUS PRODUCT TRADE DRESS and SEIRUS PACKAGING TRADE DRESS, without

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1 consent of SEIRUS, have caused and continue to cause a likelihood of confusion, mistake, and
2 deception in the minds of the public. Furthermore, said actions have a significant negative
3 impact on the commercial value of and market for SEIRUS' products under the SEIRUS
4 PRODUCT TRADE DRESS and SEIRUS PACKAGING TRADE DRESS, as well as the value
5 of and market for other products bearing the SEIRUS name.

6 47. DEFENDANT'S acts of infringement as alleged above constitute unfair
7 competition actionable under the laws of the State of California as fraudulent business acts or
8 practices, in that, *inter alia*, said acts are likely to confuse the public as to the origin of the
9 products.

10 48. DEFENDANT'S acts of infringement as alleged above constitute unfair
11 competition actionable under the laws of the State of California as deceptive and false
12 advertising, in that, *inter alia*, said acts are likely to cause confusion, mistake, and deception.

13 49. Such acts and omissions described above are unlawful, unfair, fraudulent,
14 deceptive, misleading, and untrue and constitute a violation of Business & Professions Code
15 §17200 *et seq.* SEIRUS reserves the right to identify additional violations by DEFENDANT as
16 may be established through discovery.

17 50. As a result of DEFENDANT'S said acts of unfair competition, SEIRUS has
18 suffered and will continue to suffer irreparable harm, and SEIRUS has no adequate remedy at
19 law with respect to this injury. Unless the acts of unfair competition are enjoined by this Court,
20 SEIRUS will continue to suffer irreparable harm.

21 51. As a direct and legal result of DEFENDANT'S unlawful, unfair, and fraudulent
22 conduct described above, DEFENDANT has been and will continue to be unjustly enriched with
23 ill-gotten gains.

24 **SEVENTH CLAIM FOR RELIEF**
25 **(Declaratory Relief for Invalidity of Patent)**

26 52. Upon information and belief, DEFENDANT is the assignee and owner of United
27 States Design Patent No. D566,339, entitled "Combined Nose and Mouth Guard" (the "339
28 PATENT").

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1 53. The application (No. 29/278,839) for the '339 PATENT was filed on or about
2 April 11, 2007, and the patent issued on or about April 8, 2008. However, the invention in the
3 '339 PATENT was known or used by others prior to the invention thereof by the applicant for
4 the '339 PATENT. The Claim of the '339 PATENT is invalid for failure to satisfy the statutory
5 criteria for patentability under the patent laws of the United States, including without limitation
6 35 U.S.C. §§ 101, 102, 103, and 171.

7 54. SEIRUS' '804 PATENT was issued on June 1, 1993. SEIRUS has in the past and
8 continues to dedicate enormous resources to the research, development, and marketing of
9 products implementing the '804 PATENT.

10 55. SEIRUS and DEFENDANT have an actual case or controversy as to the
11 invalidity of the '339 PATENT that is appropriate for adjudication by this Court. To avoid legal
12 uncertainty and to protect its substantial investment, and anticipated future investment, in its
13 business, SEIRUS now brings this declaratory relief action.

14 56. This is an exceptional case and SEIRUS is entitled to recover from DEFENDANT
15 reasonable attorneys' fees and expenses in bringing this action.

16 **WHEREFORE**, SEIRUS requests that this Court enter judgment in its favor, and against
17 DEFENDANT as follows:

18 1. For judgment that DEFENDANT has infringed, contributorily infringed and/or
19 induced the infringement of, at least one claim of the '804 PATENT and/or '690 PATENT;

20 2. That SEIRUS recover damages against DEFENDANT under 35 U.S.C.
21 § 284 in an amount to be determined at trial or by accounting for the lost profits, but no less than
22 a reasonable royalty, on all sales of each of the infringing products alleged above and any others
23 that are subsequently discovered in the course of this proceeding, plus pre-judgment and post-
24 judgment interest;

25 3. That the damages awarded pursuant to the preceding paragraph be increased to
26 three times the amount awarded because this is an exceptional case under 35 U.S.C. § 284;

27 4. That the Court declare this is an exceptional case and SEIRUS be awarded all of
28 its attorneys' fees in connection with this matter under 35 U.S.C. § 285;

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1 5. That the Court preliminarily and/or permanently enjoin and restrain
2 DEFENDANT, its officers, agents, servants, employees and those persons in active concert or
3 participation with DEFENDANT, from further acts of infringement for the remaining life of the
4 '804 PATENT and '690 PATENT under 35 U.S.C. § 283;

5 6. That the Court preliminarily and permanently enjoin DEFENDANT and its
6 employees, servants, agents, affiliates, distributors, dealers, attorneys, successors and/or assigns,
7 and all persons in active concert or participation with DEFENDANT, from manufacturing, using,
8 selling, offering to sell, importing for sale, advertising, displaying, or using any of the
9 ACCUSED TRADE DRESS PRODUCTS, or any products likely to cause confusion, mistake,
10 and deception, or to misappropriate SEIRUS' intellectual property;

11 7. That the Court award SEIRUS damages for lost profits, loss of goodwill or other
12 damages as appropriate;

13 8. For judgment that SEIRUS be awarded damages under U.S.C. § 1117 for all of its
14 lost profits, the profits of DEFENDANT, and the costs of this action;

15 9. That the damages awarded under the preceding paragraph are to be increased to
16 three times the amount awarded under 15 U.S.C. § 1117(b);

17 10. That DEFENDANT, its officers, agents, servants, employees and those persons in
18 active concert of participation with any of them, be permanently enjoined from further acts of
19 unfair competition in violation of 15 U.S.C. § 1125(a)(1);

20 11. That the Court direct the destruction of DEFENDANT'S current advertising,
21 promotional and related materials and products, as they relate to such activity in the United
22 States, that bear the SEIRUS PRODUCT TRADE DRESS and/or SEIRUS PACKAGING
23 TRADE DRESS and/or any other confusingly similar trade dress, and DEFENDANT'S current
24 inventory of products pursuant to 15 U.S.C. § 1118 and other applicable laws;

25 12. That the Court award punitive damages for intentional and willful acts;

26 13. That the Court award SEIRUS its costs, expenses, and attorneys' fees in this
27 action pursuant to 15 U.S.C. § 1117, 35 U.S.C. § 235, and other applicable laws;

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By: Matthew D. Murphy
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Kimberly D. Howatt
Marc A. Holmquist
Attorneys for Plaintiff
SEIRUS INNOVATIVE ACCESSORIES, INC.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SEIRUS INNOVATIVE ACCESSORIES, INC., a Utah corporation

DEFENDANTS

BALBOA MANUFACTURING COMPANY, LLC, a California Limited Liability Company

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego
(EXCEPT IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) CLERK U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

(c) Attorney's (Firm Name, Address, and Telephone Number)

Matthew D. Murphey, SBN: 194111

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09 CV 2274 JAH

DEPUTY
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 446 Amer. w/Disabilities—Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. §§ 1051 et. seq. and 35 U.S.C. §§ 271 et. seq.,

Brief description of cause: Patent Infringement, Federal Trade Dress Infringement, False Designation of Origin, Unfair Competition and Declaratory Relief for Patent Invalidity

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
October 12, 2009

SIGNATURE OF ATTORNEY OF RECORD
Marc A. Holmquist

FOR OFFICE USE ONLY

RECEIPT # 6249 AMOUNT 350.00 APPLYING IFP

JUDGE

MAG. JUDGE

CR MS 10/14/09

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS006249
Cashier ID: msweeney
Transaction Date: 10/14/2009
Payer Name: SAN DIEGO LEGAL SUPPORT SVCS

CIVIL FILING FEE

For: SEIRUS V BALBOA MANUFACTURING
Case/Party: D-CAS-3-09-CV-002274-001
Amount: \$350.00

CHECK

Check/Money Order Num: 83210
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.